

No. 12,578

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE T. GOGGIN, Trustee in Bankruptcy of the Estate of
Frank Rieber, Inc.,

Appellee.

Upon Appeal From the District Court of the United States
for the Southern District of California,

BRIEF FOR THE APPELLEE GEORGE T. GOGGIN.

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BRIEF FOR THE APPELLEE GEORGE T. GOGGIN.

Question Presented.

Appellant has correctly stated the question for determination. (B. 2.) For clarity and emphasis only will it be referred to herein. In a word, this Court is asked to determine whether interest on tax claims stops at date of bankruptcy, or whether it continues to date of payment.

Statement.

The Referee of the Bankruptcy Court below [R. 21], and the Judge of the District Court [R. 35], held that interest on tax claims stops at date of bankruptcy. Appellee believes the judgments of the lower tribunals are correct; and that the Supreme Court of the United States has decided the matter beyond further dispute. (*New York v. Saper*, 336 U. S. 328, 93 Law Ed. 710.)

Statutes Involved.

Appellant has referred to certain statutes. (B. 3.) Other statutes if deemed pertinent will be referred to in other parts of this brief.

Summary of Argument.

There is no authority in law for the imposition of interest on tax claims beyond the date of bankruptcy. Tax claims, whether secured by liens or not, are treated alike with respect to interest.

There is no authority in law for supplementing the record in a Court of appeal, to include matters not considered by the Court below.

ARGUMENT.

A. The Request by Appellant to Supplement the Record Is Without Merit.

One preliminary matter should perhaps be disposed of before entering into the argument on the main question. Appellant made a motion to supplement the record and that fact was referred to in its brief upon one or more occasions. (B. 4, 5, 6.) The matter was deferred by the Court following a hearing on September 25. (B. 6.)

For the reasons set forth in Appellee's Points and Authorities in opposition to the motion (on file in this proceeding), the motion should be denied and the matters sought to be included should be ignored. (See *Hcath v. Helmick* (1949), 173 F. 2d 156, cited in said Points and Authorities.)

The Appellant tacitly admits that its motion to supplement is of doubtful merit and says of the motion that it ". . . may be somewhat irregular. . . ." (B. 18.) The motion seeks to insert in the record matters not before the Referee, and not before the Judge of the District Court, for consideration at the time their decisions were made. The only true record before the lower tribunals were two written stipulations [R. 8 to 20] on factual matters.

B. The United States Is Not Entitled to Receive Interest on Its Tax Claims After Date of Bankruptcy.

The Appellant claims interest should be added to its tax claims, secured by liens, after date of bankruptcy and to date of payment. (B. 8.) Appellee contends that interest stops at the date of bankruptcy on any kind of a tax claim, including those secured, as here, by liens. Appellant attempts to argue that such tax claims should be treated as an exception to the general rule.

Appellant argues that in some cases ordinary secured creditors (holding mortgages) are entitled to interest to date of payment, and hence its tax claims should be similarly treated. (B. 8.) In a word, Appellant claims the lower Court erred in allowing interest only to the date of bankruptcy of the taxpayer.

Despite the earnestness of Appellant's arguments, it would appear that the Supreme Court of the United States has a rather different view of the matter. It has been held in a recent case that interest stops on tax claims at date of bankruptcy. (*New York v. Saper*, 336 U. S. 328 (1949), 93 Law Ed. 710.) The case appears to make no distinction between tax claims which are not secured by liens and those which are secured by liens. Nor does the case appear to apply to only one form of tax claim. It appears to apply the rule just stated to tax claims of every kind, and not alone to unsecured tax claims. A reading of the case would indicate that the Court has thoroughly explored the subject. The case does not appear to draw

a line between secured and unsecured tax claims. Also clear to us from reading the case is the conclusion that the Court apparently did not intend to make any exception in favor of so-called secured tax claims, or to distinguish between them and tax claims which are not so secured. This conclusion is heightened as one reads the case and finds no discussion on the particular subject as to whether the taxes in question are secured by liens or not. At least this writer can find no such discussion.

Nor does the *New York v. Saper* case above-cited ignore some of Appellant's arguments in the case at bar. The Appellant cites section 294 of the Internal Revenue Code, providing for payment of interest by a taxpayer to date of payment of the tax. (B. 11, 3—Appendix.) The Court in the *Saper* case noted at page 720, Law Edition, that the United States cites federal taxing statutes directing “. . . that upon non-payment of the tax there shall be added, as part of the tax, interest . . . to date of payment.” (Footnote 18.) Thus the Supreme Court had before it in the *New York v. Saper* case the same argument that is being advanced by Appellant here. And it seems doubtful that Appellant is now advancing anything that was not embraced within the matters considered in the *New York v. Saper* case.

The Court also noted in the *New York v. Saper* case that 40 years ago, Mr. Justice Holmes wrote for the Supreme Court that the rule stopping interest at bankruptcy had then been followed for more than a century and a half. (P. 330.) The rule decided by the Supreme

Court in the *New York v. Saper* case appears in head-notes one and two as follows:

“In the absence of statutory provisions to the contrary and as a principle of bankruptcy law, claims against a bankrupt bear interest until date of bankruptcy and not until payment.” (Note 1.)

“In accordance with general principles of bankruptcy law, a tax claim against a bankrupt bears interest until the date of bankruptcy, and not until payment, since the Bankruptcy Act contains no provision expressly repudiating the general principle or allowing an exception in favor of tax claims.” (Note 2.)

Wherefore, Appellee submits that the decision appealed from ought to be affirmed.

Respectfully submitted,

BATES S. HIMES,

Attorney for Appellee,